

REMARKS

Claims 1-24 are pending in this application, and have been amended to define still more clearly what Applicants regard as their invention; these changes have been made for the purposes of clarification only, and no change in scope of the claims is either intended or believed to be effected by the changes. Claims 1, 7, 9, 15, 17, and 23 are independent.

The Office Action objects to claims 9, 17, and 18 for the informalities listed at paragraph 4. It is believed that the amendments to the claims presented herein address these objections. The Examiner is kindly thanked for his suggestions. Withdrawal of this objection is respectfully requested.

The Office Action rejects claims 5, 13, and 17-22 under 35 U.S.C. 112, second paragraph, as being indefinite. The claims have been carefully reviewed and amended as deemed necessary to ensure that they conform fully to the requirements of Section 112, second paragraph, with special attention to the points raised in paragraph 6 of the Office Action. It is believed that the rejection under Section 112, second paragraph, has been obviated, and its withdrawal is therefore respectfully requested.

The Office Action rejects claims 1-24 under 35 U.S.C. 101 as being directed to non-statutory subject matter.

As to method claims 1-8, the Examiner essentially asserts that method claims 1-8 are neither (1) tied to another statutory class nor (2) transform underlying subject matter. Applicants note that on October 30, 2008, the Federal Circuit decided *In Re Bilski*, which established a new test with regard to claimed processes. This test (the so-called “machine-or-transformation” test) was set out in *Bilski* as follows:

- A claimed process is surely patent-eligible under § 101 if:
 - (1) it is tied to a particular machine or apparatus, or
 - (2) it transforms a particular article into a different state or thing.

Method claims 1-8 have been amended to recite that they are implemented on a computer; thus, they are now “tied to a particular machine or apparatus.”

As to apparatus claims 9-16, the Examiner states that “while claims 9-16 are directed to an apparatus, it can reasonably be interpreted that the apparatus as disclosed includes nothing more than sets of software instructions or software elements which merely offers a program that uses primitives and protocol to schedule the transmission of data.” Applicants have amended the claims herein to recite that the apparatus comprises a processor and a memory coupled to the processor.

As to program claims 17-24, the Examiner states that those claims “are directed to the program itself, and not to a machine, manufacture, process, or composition of matter.” Applicants have amended claims 17-24 herein to recite that the computer program is embodied in a computer-readable medium.

For at least the foregoing reasons, it is respectfully requested that the rejection under 35 U.S.C. 101 be withdrawn.

The Office Action rejects claims 1-25 under 35 U.S.C. 102(b) as being anticipated by Tanaka et al. (EP 1715634).

Applicants note that EP 1715634 is the Applicants’ own work and that EP 1715634 claims the benefit of the same PCT application and the same JP application that the above-identified U.S. application claims the benefit of. The Examiner nevertheless cites EP 1715634 against the claims of this U.S. application, stating, at paragraph 2 of the Office Action: “The examiner notes that the foreign priority for this application is not granted due to the deadline for filing of the national stage exceeding 30 months from the priority date.” (Emphasis in the original.)

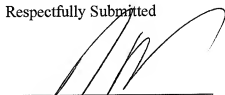
However, it is respectfully submitted that the Examiner is incorrect on this point, and,

therefore, EP 1715634 does not qualify as prior art against this U.S. application. With respect to this U.S. application, its JP priority application was filed on February 9, 2004 and its PCT application was filed on February 8, 2005. This U.S. application entered the National Stage on April 18, 2006, which was in fact within 30 months of the JP priority date. (The Notice of Acceptance received in this application even confirms this.)

It appears that the Examiner assumed March 31, 2008 (listed as the "filing date" on the Office Action) as the date of entry into the National Stage, which is, respectfully, not correct. Accordingly, Applicants submit that the rejection under 35 U.S.C. 102(b) is improper. Applicants also request that any next Action, if it is not an allowance, be deemed non-final.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Respectfully Submitted



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